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CASE & COMMENT

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 12. DECEMBER, 1905. NO. 7.

CASE AND COMMENT

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Protecting State Emblems.

A Massachusetts statute making it unlawful to use the arms or the great seal of the commonwealth, or any representation thereof, for any advertising or commercial purpose, is held constitutional in Com. *v.* R. I. Sherman Mfg. Co. (Mass.) 75 N. E. 71. This was a case of using a representation of the arms of the commonwealth on labels for an advertising and commercial purpose. The design used in the labels was one which the commonwealth had appropriated to itself as a symbol of its sovereignty. The court says it is an extraordinary proposition to say that the law interfered with the defendant's trademark in such a case, and it regards the right of the legislature of the state to forbid the use of the great seal and the arms of the commonwealth for any advertising or commercial purpose to be too clear for argument. The court refers to the cases of Ruhstrat *v.* People, 185 Ill. 133, 49 L. R. A. 181, 76 Am. St. Rep. 30, 57 N. E. 41, and People *ex rel.* McPike *v.* Van De Carr, 178 N. Y. 425, 66 L. R. A. 189, 102 Am. St. Rep. 516, 70 N. E. 965, which were cases respecting statutes to protect the flag from use for commercial purposes. It points out that in the Illinois case one of the main grounds of decision was that the national government had passed no legislation restricting the use of the flag, while in the New York case the decision was based on the theory that the statute applied to articles already in existence, which were lawfully manufactured and held in possession before the statute was passed. In fact, this decision goes no further than to hold that the statute cannot make such articles unlawful, because it would deprive persons of property without due process of law. The court is very careful to go no further than this, although the court below had held that, while the statute could prevent mutilation of the flag, or the printing of advertisements upon it, it was unconstitutional to forbid the use of the flag, or a representation thereof, for the advertising of merchandise; and also held that there was an unreasonable discrimination made by the statute by certain exemptions. The New York statute has since been amended to relieve it from any charge of discrimination, and also to limit its application to articles thereafter made; but still prohibits the use of the flag, or a representation thereof, for advertising purposes. The New York decision by the court of appeals and the Massachusetts decision involve no contradiction. The decisions by the Illinois court, and by the appellate division in New York, though on some grounds clearly distinguishable from the Massachusetts case, both explicitly deny that it is a proper exercise of the police power to forbid the use of the flag, or a representation

thereof, for advertising purposes. To this extent they are directly in conflict with the Massachusetts case; but, since the court of appeals of New York, in affirming the decision of the appellate division, limited it explicitly to the effect of the statute on previously made articles, the decision of the lower court can hardly be deemed an authority to any greater extent. As heretofore contended in these columns, "the flag belongs to the same category as the seal of the government, and the money, bonds, etc., which the government issues;" also, that the extent to which it is for the public interest to restrict their use by private individuals is a question of public policy for the legislatures, and not for the courts, to decide. This is what the Massachusetts court has now held in respect to the great seal, and the principle of that decision unquestionably applies to sustain a similar statute as a proper exercise of the police power for the protection of the flag.

Liability of Church Member for Its Debts.

It would certainly surprise several millions of people if it were decided that membership in a church made a person individually liable for the debts of the organization, and it will doubtless surprise most of them to know that any question of their liability has ever been brought before the courts. Yet in reality there is a considerable body of legal decisions on this question, and these are reviewed and summed up in a note in 69 L. R. A. page 255, to the case of Allen *v.* North Des Moines Methodist Episcopal Church. In this case the question of the individual liability of the members for the debt of the church does not seem to have been very seriously pressed upon the court, but in the course of the opinion the liability of the members is set forth as follows: "Plaintiff is not the creditor of the members. She has not, and never has had, a right of action against them as such. The only duty owed to her by the individual members was the moral duty to use all reasonable effort, by their own contributions and by such assistance as might properly be obtained from others, to maintain the solvency of the corporation. There is nothing before us to show that this full measure of duty was not performed, while the proved fact that the church struggled with its difficulties for so many years before surrendering to the inevitable affords some presumption that its members were not unmindful of their obligations." In some of the New England states the early cases held church members liable for the debts of their society, but this liability was the result of the peculiar character of the ecclesiastical societies in those states before the adoption of modern constitutions. They were neither private corporations, nor yet mere voluntary, unincorporated associations, but were in fact municipal and public corporations, the parishes being originally coextensive and identical with the several towns, which at first exercised parochial powers; and when, in some instances, the parishes became separate communities, they still retained their public and political character. They embraced substantially all the persons residing within their territorial limits, and no act was necessary to constitute membership; it followed residence within the limits of the parish as a matter of course. To support and maintain religious instruction and worship through the agency of religious societies was a public duty, enjoined by law. The liability of the inhabitants of a town, by immemorial usage, for its debts, was extended to members of parishes. But with the passing of the parish system the reason for holding individual members of a church liable for its debts likewise passed away, and the summary of the present decisions is that the liability of a church member for debts of the religious association is like that of any other corporation or association. If the society is incorporated, the members are not individually liable, and, if it is not incorporated, they are liable only when they have in some way been instrumental in creating the debt or have ratified it; though in Georgia, as an exception, church members have been declared liable on its contracts as joint promisors or partners.

A Shameful Attack on a Supreme Court.

A pamphlet has just been received which

makes a very bold attack on the supreme court of Illinois. It claims to be an indictment based on "Cold Facts from Court Records," and to be published "To Aid the Cause of the National Liberty League." The whole tone of the pamphlet is such that discriminating persons are not likely to give it much respect. It abounds with vituperative epithets, which are sufficient to indicate passion, rather than reason, on the part of the writer. Yet, inasmuch as it purports to be based on a change of the doctrine of the court, and quotes from different decisions in an attempt to support its contentions, it may deserve notice, notwithstanding its grossly abusive language. Under the heading, "An Honest Court," the pamphlet refers to the case of Reinback *v.* Crabtree, 77 Ill. 187, and says that the court expressly held, "Neither the Supreme Court of the United States, nor this court, recognizes two legal standards of value. A dollar is a dollar, whether payable in gold or in national currency; and 10 per cent interest, payable in gold, may be lawfully paid dollar for dollar in any currency which the general government has declared to be a legal tender in the payment of debts." It is true that the court used this language, but, in the first place, it was made by way of recital, and that question was not before the court for decision. In the second place, the decisions of the United States Supreme Court, beginning with that of Bronson *v.* Rodes, 7 Wall. 229, 19 L. ed. 141, had already established the contrary doctrine, that express provisions for payment in gold or silver are valid, and that in such cases the creditor may refuse to accept paper currency in payment. Subsequent decisions of the Illinois court in the cases of Belford *v.* Woodward, 158 Ill. 132, 29 L. R. A. 593, 41 N. E. 1097, and Dorr *v.* Hunter, 183 Ill. 435, 56 N. E. 159, follow the decisions of the Supreme Court of the United States, as, of course, it was required to do, since the question is one of Federal law, on which the decisions of the highest Federal court are final authority. The author of the pamphlet, however, refers to these later and correct decisions of the state court under the caption of, "The Degenerated Court," and it charges the court with a purpose to "bind the people as slaves to the money monopoly." The pamphlet refers to what are called the Legal Tender Cases of the United States Supreme Court, in which it held that greenbacks were valid tender for debts contracted before, as well as those contracted after, the legal tender law was enacted. But, either through ignorance or worse, it does not refer to the case of Bronson *v.* Rodes and later decisions of the court, which expressly decide that, where a contract expressly calls for payment in coin, the creditor may lawfully insist on having it paid in that kind of money. The fact that these decisions, exactly in point, are omitted from the pamphlet, makes this part of the pamphlet plausible enough, it may be, to deceive some intelligent people who are not thoroughly familiar with the Federal decisions on the subject. It is for this reason that the pamphlet, violently vituperative as it is, has been here mentioned. It may be that the writer of this pamphlet is ignorant of the existence of those decisions of the United States Supreme Court which explicitly decide the exact point in question, or of the fact that these decisions are the ultimate law of the subject, which the state court had no option to disregard. This is the charitable supposition, although it does not get very much support from the fact that he is entirely familiar with the other decisions which he has speciously put together to make an apparent case. In any event, the foundation for his attack on the court is as false as his language is violent.

Liability of Owner of Building Used for Gambling.

A lien upon a building and real estate used for gaming purposes, for the amount of money lost there at play, is created by an Ohio statute, if the owner of the property knowingly permits it to be used for such purposes. (Ohio Rev. Stat. § 4375.) A test of the constitutionality of this statute was decided by the United States Supreme Court in the recent case of Marvin *v.* Trout, 199 U. S. 212, Adv. S. U. S. 1905, p. 31, 26 Sup. Ct. Rep. p. 31. The owner of such property contended that the enforcement of the provisions of the law against his property constituted a taking thereof without due process of law, but the court denied his contention, and affirmed the decision of the supreme court of Ohio, which

upheld the statute, and subjected his property to a lien for money lost thereon by gambling. The court said: "For a great many years past gambling has been very generally in this country regarded as a vice to be prevented and suppressed in the interest of the public morals and the public welfare. The power of the state to enact laws to suppress gambling cannot be doubted, and, as a means to that end, we have no doubt of its power to provide that the owner of the building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable, in his property which is thus used, to pay a judgment against those who won the money, as is provided in the statute in question. That statute, or one somewhat similar to it, . . . has been in force in Ohio ever since, at least, 1831, and similar legislation is found upon that subject, or upon that of the regulation of the sale of liquor, in most of the states of the Union. . . . We are aware of no provision in the Federal Constitution which prevents this kind of legislation in a state for such a purpose."

Habeas Corpus in the Philippines.

The suspension of the writ of habeas corpus in the Provinces of Cavitae and Bitangas by the governor general of the Philippines, pursuant to a resolution and request of the Philippine Commission acting under the act of Congress known as the Philippine Bill, was recently upheld by the supreme court of the Philippine islands in an opinion by Johnson, J., concurred in by four other judges, with one dissenting. The ground on which the writ was suspended in those provinces was the existence of organized bands of ladrones, terrifying the people, and frequently killing or maiming in the most barbarous manner those who refused their demands, and raising insurrection against the constituted authorities; such that it became impossible, in the ordinary way, to conduct preliminary investigations before justices of the peace and other judicial officers. The case arose on the application for a writ of habeas corpus by a person who was under detention by the constabulary. The existence of any rebellion, insurrection, or invasion was denied in his behalf. The case was therefore presented, whether the judicial department could investigate the facts upon which the legislative and executive branches of the government had acted in suspending the privileges of the writ. In a very elaborate opinion, the suspension of the writ was held to be in accordance with the law. On the authority of Martin *v.* Mott, 12 Wheat. 19, 6 L. ed. 537, Luther *v.* Borden, 7 How. 44, 77, 12 L. ed. 599, 613, *Re* Boyle, 6 Idaho, 609, 45 L. R. A. 832, 96 Am. St. Rep. 286, 57 Pac. 706, and a large number of other decisions, the court reached the conclusion that the power, in such cases as this, to suspend the writ, is discretionary, to be exercised by the executive department; and that its determination of the facts on which the suspension is based cannot be reviewed by the courts. The opinion says: "The same doctrine has been uniformly maintained from the commencement of the government. The absurdity of any other rule is manifest. If, during the actual clash of arms, the courts were rightfully hearing evidence as to the fact of war, either with or without the aid of juries determining the question, they should have power to enforce their decisions. In case of foreign conflicts, neither belligerent would be likely to yield to the decision; and, in case of insurrection, the insurgents would not cease their rebellion in obedience to a judicial decree. In short, the status of the country as to peace or war is legally determined by the political department of the government, and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of the war or insurrection must also decide when hostilities have ceased,—that is, when peace is restored. In a legal sense, the state of war or peace is not a question *in pais* for courts to determine. It is a legal fact ascertainable only from the decisions of the political department." The dissenting opinion of Willard, J., raises a distinction between the case of Martin *v.* Mott, which related to the act of the President in calling out the militia, and the case at bar, respecting the suspension of the writ of habeas corpus, the former relating to a sudden emergency, and the latter merely to a judicial inquiry into the cause

of the detention of a person who is already in custody. The act of Congress of July 1, 1902, under which the case arose, provides as follows: "That the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion, insurrection, or invasion, the public safety may require it; in either of which events the same may be suspended by the President, or by the governor with the approval of the Philippine Commission, wherever, during such period, the necessity for such suspension shall exist." 32 Stat. at L. 692, chap. 1369, § 5. But the dissenting judge contends that, under this act, the courts should not exercise a suspension of the writ, unless an insurrection in fact exists; that is to say, that the fact is open to determination by the court when the question arises, and the determination of the executive department on this point is not conclusive.

Attacking Order of Naturalization.

A petition by the state to set aside an order of naturalization was denied in Petersen *v.* State, 89 S. W. 81, by the court of civil appeals of Texas, although the attack was on the ground that the naturalization was procured by fraud and perjury. The court cites *Re* McCarran, 8 Misc. 482, 23 L. R. A. 835, 29 N. Y. Supp. 582, in which it was held that a private individual has no standing in court to institute a proceeding to set aside an order admitting an alien to citizenship. This was a decision by the New York court of common pleas, which followed Com. *v.* Paper, 1 Brewst. (Pa.) 263, and *Re* Shaw, 2 Pa. Dist. R. 250, denying the right of a private individual to institute such a proceeding. It was taken to be well established that the admission of an alien to citizenship could not be collaterally attacked; and to this effect were cited Spratt *v.* Spratt, 1 Pet. 350, 7 L. ed. 174; McCarthy *v.* Marsh, 5 N. Y. 263; and Ritchie *v.* Putnam, 13 Wend. 524.

The Texas court based its decision on the ground that the state was in no sense a party to a naturalization proceeding, but that the state court was merely an agency of the Federal government, acting solely under Federal law, and that, in the absence of any provision in that law for the intervention of a state to vacate a naturalization, the state had no authority in the matter. In commenting on this decision, the New York Law Journal contends, however, that the state court ought to be able, by virtue of its inherent control over its own judgments and records, to set aside such an order for fraud and perjury, and that, whatever the technical form of the proceeding, it should be treated, in effect, as an appeal to this power. In support of this contention, it quotes from the opinions in *Re* Shaw, 2 Pa. Dist. R. 250 and Com. *v.* Paper, 1 Brewst. (Pa.) 263, *supra*, to the effect that, if naturalization was procured by fraud and perjury, it might be set aside on application of the attorney general of the state or the district attorney of the county, although this language was not necessary to the decision in either case. Whatever the true theory on this point, it is obviously a matter which should be definitely regulated by a Federal law. The naturalization of aliens by a multitude of state courts of various grades under the present system is subject to serious criticism. It may be necessary to continue to permit naturalization by state courts because of the long distances that, in some parts of the country especially, it would be necessary for persons to travel to become naturalized. But, if state courts are to have any jurisdiction in the matter, it seems clear that their practice and their records should be under some effective Federal control and supervision. More care should be exercised, and more thorough investigation made into the fitness of the applicants for citizenship. It might be well to consider the plan of having Federal Commissioners to investigate applications for citizenship, and requiring them to go into the matter with more care and thoroughness than the courts are able to do. At any rate, the slackness of the present practice ought to be no longer tolerated. The procedure throughout the whole country needs to be more consistent and more carefully guarded. In the thorough overhauling of the matter which ought to be made one of the details to be considered, is the matter of remedy in case of fraudulent naturalization.

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 69, Part 3.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

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Among the New Decisions.

Banks.

See also LIMITATION OF ACTIONS.

Payment by a savings bank of a forged check bearing a signature similar to that of the depositor, to one who presents the depositor's pass book, there being nothing to arouse the suspicion of the teller, or to put him upon inquiry, as to the genuineness of the check, is held in Langdale *v.* Citizens' Bank (Ga.) 69 L. R. A. 341, not to make the bank liable in a suit by the depositor to recover the money so paid, where a rule of the bank provides that payment to a person presenting a pass book shall be good and valid, unless the pass book has been lost and notice in writing given to the bank before such payment is made.

Bonds.

A statute requiring all bonds given for the faithful performance of official or fiduciary duties, or the faithful keeping, applying, or accounting for funds or property, to be executed by a surety company is held, in State *ex rel.* McKell *v.* Robins (Ohio) 69 L. R. A. 427, to be unconstitutional.

Building and Loan Associations.

A statute giving building and loan associations the right to assess and collect from members and depositors such dues, fines, interest, and premium on loans made, or other assessments, as may be provided for in the Constitution and by-laws; and which provides that such dues, fines, etc., shall not be deemed usury, although in excess of the legal rate of interest,—is held, in Cramer *v.* Southern Ohio Loan & T. Co. (Ohio) 69 L. R. A. 415, to be valid.

Burglary.

The fact that the owner of a building, to whom a detective disclosed that it was probably about to be burglarized by a person named, with the feigned assistance of the

detective, for the purpose of securing evidence of the intended burglary and other crimes, did not take steps to prevent the burglary, but passively allowed it to go on, is held, in State *v.* Currie (N. D.) 69 L. R. A. 405, not to be a consent to the burglary that will be a defense in a prosecution therefor.

Carriers.

The right of a steamship company to a limitation of its liability for loss of passengers and baggage through the sinking of its vessel is denied in *Re* Pacific Mail Steamship Co. (C. C. A. 9th C.) 69 L. R. A. 71, where the crew could not understand the language of its officers, and were not drilled in the launching of the boats, because of which the loss occurred, and the statute provides that no steamer carrying passengers shall depart from any port unless she shall have in her service a full complement of licensed officers, and a full crew sufficient at all times to manage the vessel.

A carrier who negligently delays a shipment is held, in Bibb Broom Corn Co. *v.* Atchison, T. & S. F. R. Co. (Minn.) 69 L. R. A. 509, to be liable for the damages, where, because of such delay, the goods are overtaken in transit and damaged by an act of God, even though the act of God could not reasonably have been anticipated.

A railway company which has made an arrangement with a transfer company to furnish at its passenger station all the vehicles necessary for the accommodation of the passengers arriving there on its trains, or on the trains of other railroad companies using the station, is held, in Donovan *v.* Pennsylvania Co. U. S. Advance Sheets, 91, to have the right to exclude from the station and depot grounds all other hackmen or cabmen seeking entrance for the purpose of soliciting for themselves the custom or patronage of passengers.

Conflict of Laws.

The marriage of a ward, valid where made, in a sister state, is held, in *Ex parte* Chace (R. I.) 69 L. R. A. 493, to be necessarily regarded as valid at his domicil, although it would not have been so had it been solemnized there, because of statutory limitation of his right to contract.

Constitutional Law.

Indictment by a grand jury is held, in State *v.* Guglielmo (Or.) 69 L. R. A. 466, not to be necessary to due process of law, so as to preclude the institution of a criminal prosecution by information.

The owner of a building which he knowingly permits to be used for gaming purposes is held, in Marvin *v.* Trout, Advance Sheets U. S. page 31, not to be deprived of his property without due process of law by a statute which authorizes an action to subject such building to the payment of a judgment obtained by an informer for the recovery of money lost there at play.

Solitary confinement by the state authorities pending the execution of a death sentence, after the original day fixed for the execution of that sentence has passed, even if unwarranted, is held, in Rogers *v.* Peck, Advance Sheets U. S., 87, not to be a denial of due process of law.

Corporations.

See LIMITATION OF ACTIONS; TAXES.

Damages.

Mere disappointment and regret are held, in Hancock *v.* Western U. Teleg. Co. (N. C.) 69 L. R. A. 403, not to be included in the rule allowing damages for mental anguish upon failure of a telegraph company promptly to deliver a death message.

The measure of damages for false and fraudulent representations, by which a party had been induced to exchange real property for stock in a corporation, but who had affirmed the contract after discovering the deceit, is held, in Beare *v.* Wright (N. D.) 69 L. R. A. 409, to be, in the absence of a claim for special or exemplary damages, the difference in value between what was received or parted with, as the case may be, and what would have been received or parted with had the representations been true.

Estoppel.

See JUDGMENT.

Evidence.

If the memoranda of inspection of engines prepared by the men in charge of that work, and filed in the office of the railroad company, have been lost, and the facts with regard to the inspection forgotten by them, it is held, in Manchester Assur. Co. v. Oregon R. & N. Co. (Or.) 69 L. R. A. 475, that such facts may be proved by the introduction in evidence of a transcript of such memoranda, entered by the proper clerk in a book kept for that purpose, accompanied by his testimony, and that of the inspectors, showing that inspections were made and properly entered in the book.

Gaming.

See CONSTITUTIONAL LAW.

Highways.

Owners of property in possession of tenants are held, in New Castle v. Kurtz (Pa.) 69 L. R. A. 488, not to be bound to keep watch to see that ice dangerous to travel does not form on the walks in front of it, which are properly constructed and in proper repair, where the negligent construction of their buildings does not contribute to its formation.

Homicide.

A police officer who kills a person whom he is attempting to arrest is held, in State v. Coleman (Mo.) 69 L. R. A. 381, to be guilty of a criminal offense if he uses more force than is reasonably necessary to effect his purpose.

Husband and Wife.

See also CONFLICT OF LAWS.

A conveyance of land from husband to wife in the usual form, for a valuable consideration, though without words disclosing an intent to do so, is held, in Barnum v. Le Master (Tenn.) 69 L. R. A. 353, to vest in her a separate estate which she may transfer without his joinder or consent.

That a man is deprived of his curtesy interests in land by conveying it to his wife to her sole, separate, and exclusive use, free and discharged from all his control and liabilities, is held in Bingham v. Weller (Tenn.) 69 L. R. A. 370.

Incompetent Persons.

A deed without power of revocation, from a parent who is incapacitated physically and weak mentally, to his daughter who has for some time had the care of him, made without the benefit of competent and independent advice, is held, in Slack v. Rees (N. J. Err. & App.) 69 L. R. A. 393, to be properly set aside by equity.

Injunction.

See JUDGMENT.

Insurance.

An agent authorized to issue policies is held, in Richard v. Springfield F. & M. Ins. Co. (La.) 69 L. R. A. 278, to bind the company by all waivers, representations, or other acts within the scope or requirements of his business, unless the insured has notice of the limitation of his power.

Judgment.

The right to file a bill of review after the lapse of the statutory period for an appeal is denied in Watkinson v. Watkinson (N. J. Err. & App.) 69 L. R. A. 397, except in case of new or newly discovered matter.

A decree denying the right of a corporation to have bonds secured by mortgage on its property surrendered by a pledgee who was seeking to foreclose its lien on the bonds against the pledgeor, on the ground that the bonds had been wrongfully put upon the market, and had never

been rightfully negotiated, is held, in Ruckman *v.* Union Railway (Or.) 69 L. R. A. 480, to be no bar to a subsequent suit against the corporation to foreclose the mortgage by which they are secured, since the latter question could not have been determined in the former action.

That a party pleading a judgment as an estoppel must sustain the plea by showing that the particular matter in controversy was actually determined in the former litigation, in accordance with his contention, is declared, in Draper *v.* Medlock (Ga.) 69 L. R. A. 483, where it appears from the record introduced in support of the plea that several issues were involved in such litigation, and the verdict and judgment do not clearly show that this particular issue was then decided.

A judgment of a justice of the peace, rendered within less than the time prescribed by statute after service of summons, is held, in Kerr *v.* Murphy (S. D.) 69 L. R. A. 499, not to be so far void that its execution can be enjoined.

Liens.

A subcontractor is held, in Hunt *v.* Darling (R. I.) 69 L. R. A. 497, to be entitled to pursue simultaneously a proceeding to enforce his mechanic's lien against the property and an action against the contractor for the amount due him, in which he attaches funds due the contractor from the property owner.

Limitation of Actions.

Giving a note for interest upon a larger note already barred by the statute of limitations, which does not in any way refer to the earlier note, is held, in Kleis *v.* McGrath (Iowa) 69 L. R. A. 260, not to revive it under a statute providing that causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same.

A state statute of limitations is held, in Rankin *v.* Barton, Advance Sheets U. S. 29, not to begin to run against the right to enforce the individual liability of stockholders in a national bank until the amount of such liability has been ascertained and assessed by the Comptroller of the Currency.

Lottery.

The fact that each member is entitled to trade out the amount he has paid in whenever he chooses to withdraw from the club is held, in People *v.* McPhee (Mich.) 69 L. R. A. 505, not to prevent a suit club, which is a scheme by which a certain number of persons pay a small sum per week and choose by lot each week one of the number who shall receive a suit of clothes worth much more than such weekly payment, upon receipt of which he ceases to be a member of the club, from being a lottery.

Negligence.

The owner of a wagon, seated beside the driver, whom he employs, is held, in Markowitz *v.* Metropolitan Street R. Co. (Mo.) 69 L. R. A. 389, to be chargeable with the driver's negligence in attempting to cross a street car track in front of an approaching car which is in plain view.

Officers.

See HOMICIDE.

Physicians and Surgeons.

An ophthalmologist, who prefixes to his name the letters "Dr." on his sign, and on notices in which he undertakes to correct certain diseased conditions by the fitting of glasses to the eyes, is held, in State *v.* Yegge (S. D.) 69 L. R. A. 504, to come within the terms of a statute providing that, when a person shall append the title "Dr." in a medical sense to his name, he shall be regarded as practising medicine within the meaning of a statute which requires a license as a condition precedent to doing so.

Specific Performance.

That the statute of frauds is satisfied

and specific performance of a contract may be decreed, is held, in Charlton *v.* Columbia Real Estate Co. (N. J. Err. & App.) 69 L. R. A. 394, where a signed, but undelivered, lease, taken in connection with a previously signed memorandum in writing of an oral agreement for a lease, shows a complete agreement on the terms of the lease.

Taxes.

A statute making all the property of corporations engaged in maritime commerce or navigation taxable only at the place designated in their charters as their general office for business is held, in Teigan Transp. Co. *v.* Board of Assessors (Mich.) 69 L. R. A. 431, to violate a constitutional provision requiring a uniform rate of taxation.

The right of the legislature to provide for the valuation and assessment of the property of railway companies by one assessing body, and for ascertaining the value of the whole of such property of any one railway corporation subject to taxation in the state as a unit, or as an entirety, and to distribute the value as thus found over the main line or track of such railway company, and to the different taxing districts, municipalities, etc., on a mileage basis, is sustained in State *ex rel.* Morton *v.* Back (Neb.) 69 L. R. A. 447.

Due process of law is held, in Union Refrigerator Transit Co. *v.* Kentucky, Advance Sheets U. S. 36, to be denied a Kentucky corporation by a tax assessed under the authority of a Kentucky statute upon its rolling stock permanently located in other states and employed there in the prosecution of its business.

Waters.

Surface waters which, by natural drainage, collect in a natural basin and depression upon the premises of a dominant tenement, and escape therefrom only by percolation or evaporation, forming thereby a lake or pond, permanent in its character, are held, in Davis *v.* Fry (Okla.) 69 L. R. A. 460, to lose the character of surface waters when so collected, so that they may not, by artificial means, other than that incident to the cultivation of the soil, be drained to the damage of a servient tenement without liability for such acts.

Wills.

Where a will, the body of which is written on horizontal lines on several pages of foolscap paper, so that all its items and provisions are in consecutive order to the end on the last page, under which the testator's signature appears, but there is also written in the margin of the last page to the left of, and separated from, the body of the instrument, a dispositive clause extending lengthwise of the page from near the bottom to near the top, and in no manner connected with the body of the instrument by any words or marks to indicate where the marginal matter is to be read in relation to the other provisions, and it is established by testimony that the marginal matter was written after all the other provisions, at the request of the testator, and before he attached his signature under the body of the will,—it is held, in Irwin *v.* Jacques (Ohio) 69 L. R. A. 422, that the will is not signed at its end, as required by statute, and is invalid for that reason.

New Books.

"Squire Phin." A Novel. By Holman F. Day. New York. A. S. Barnes & Company. 1905. Cloth $1.50.

This is one of the Down East stories, describing the quaint characters of a Maine village, among whom Squire Phin, the village lawyer, is the hero. It contains comedy, tragic situations, and local humor.

"Brief Making and the Use of Law Books." By William S. Lile, Henry S. Redfield, Eugene Wambaugh, Alfred S. Mason, and James E. Wheeler. Edited by Nathan Abbott. St. Paul. Minn. West Publishing Company. 1906. 1 Vol. $2.50.

Part I. is The Brief on Appeal; Part II., How to Use Decisions and Statutes; Part III., American Law Publications; Part IV., How to Find the Law. This is a book of unique character, with much practical in-

formation on the subjects just stated. It includes the list of abbreviations of law publications. The book is in a class by itself, and will give much valuable information that is not easy to obtain elsewhere.

"The Law of Personal Injuries in Mines." By Edward J. White. $6.75.

"Elevators." By James A. Webb. 2d ed. $4.75.

Bolen on "Plain Facts as to the Trusts and Tariff." $1.50.

Dunning on "History of Political Theories from Luther to Montesquieu." $2.50.

Kirkbride & Sterrett on "The Modern Trust Company." $2.

Smythe on "Constructive Democracy." $1.50.

"Architect, Owner, and Builder before the Law." By T. M. Clark. $3.

Merriam on "American Political Theories." $1.50.

"Fire Insurance." By George A. Clement. Vol. 2, "Fire Insurance as a Void Contract." $6 net. Same, 2 vols. $12 net.

"Ohio Mechanics' Lien Law." By Messrs. Treadway & Marlatt. $4.

"Bates's Ohio Statutes." 5th ed. 1906. 3 vols. $12.

"Examination Questions for Admission to Practice by Appellate Court of California." By Gordon A. Stewart. Morocco, $2. Interleaved, $2.50.

"Supplement to Snyder's Annotated Lien Law." 4th ed. Paper, 75 cts.

"Tendencies in Recent American Road Legislation." By F. G. Young. Paper, 25 cts.

"A Treatise on the Law of Partnership." 2d ed. By Walter A. Shumaker. Cloth, $3. Sheep, $3.50.

"New York Bar Examinations and Courses of Law Study." By Franklin M. Danaher. 2d ed. Canvas, $4.

"A Treatise on the Law of Crimes." By W. L. Clark and W. L. Marshall. 2d ed., by Herchel B. Lazell. 3 vols. $18.

"1905 Supplement to the California Codes." By J. H. Deering. $4.

"The Theory of the Law of Evidence as Established in the United States, and the Conduct of the Examination of Witnesses." By W. Reynolds. 4th ed. Sheep, $2.50. Cloth, $2.

"The Revised Statutes and Recodified Laws of Ohio, 1906." Renumbered, reannotated, and reindexed. By Jay F. Laning. $12.

"Notes to the Spanish Civil Code." Showing changes effected by American legislation. By C. A. Willard. $5.

"Franchise Tax Cases." (United States Supreme Court, October Term, 1904.) Paper, 50 cts.

"Principles of Law." (United States.) Scranton International Correspondence School. 8 vols. $30.

Gilbert's "Annotated Code of Civil Procedure of New York State." $10.

"Cobbey's Annotated Statutes of Nebraska." Supplement. 1905. $2.

"American Diplomacy, Its Spirit and Achievements." By J. Bassett Moore. $2.

"A Digest of the Decisions of the Missouri Courts." 10 vols. $60.

"Briefs on the Law of Insurance." By Roger W. Cooley. 5 vols. $27.

"Trade Unionism and Labor Problems." By J. Rogers Commons. $2.50.

Ripley on "Trusts, Pools, and Corporations." 1905. $2.15.

"Revised Code of North Carolina, 1905." 2 vols. $7.50.

"Annotated Code Supplement 1902–1905." By Amasa J. Parker, Jr. $6.

"Annotations of Land Decisions." From Vol. 1 to 33, inclusive. $10.

"Revised Codes of South Dakota." 1904. $7.64 delivered.

"Formation and Management of Corporations in Pennsylvania." By Frank R. Savidge. 2 vols. $10.

"The Life, Writings, and Essays of John James Ingalls." Compiled by Mrs. Ingalls. Full Cloth, $2.50. Buckram, $3. Half Morocco, $3.25. Full Morocco, Gilt Top, Uncut Edges, $4.50.

"Hints for Forensic Practice." By Theodore F. C. Demarest. $1.50.

"Ejectment." By George W. Warvelle. $6 net. $6.30 delivered.

"Pepper & Lewis's Digest of Pennsylvania Decisions." 23 vols. $230.

Recent Articles in Law Journals and Reviews.

"Federal Control of Insurance."—61 Central Law Journal, 384.

"The Administration of Criminal Law."—15 Yale Law Journal, 1.

"International Agreements without the Advice and Consent of the Senate."—15 Yale Law Journal, 18.

"Naturalization."—13 American Lawyer, 419.

"Governmental Regulation of Railroad Rates."—13 American Lawyer, 431, 485.

"Compulsory Arbitration."—13 American Lawyer, 435.

"The Theory of Obligations in the Civil Law."—13 American Lawyer, 439, 482.

"The Province of the Judge and of the Jury."—31 Law Magazine and Review, 1.

"The Dead Hand."—31 Law Magazine and Review, 24.

"Reform of the Patent Law."—31 Law Magazine and Review, 31.

"Neutral Trade in Contraband of War."—31 Law Magazine and Review, 51.

"The Torrens System of Land Transfers."—11 Virginia Law Register, 570.

"Poisoning Fish in Streams and Inland Waters."—69 Justice of the Peace, 529.

"Habitual Inebriates in Foreign Countries."—69 Justice of the Peace, 530.

"Land Tenure in the Isle of Man."—30 Law Magazine and Review, 129.

"State Protection of Subjects Abroad."—30 Law Magazine and Review, 157.

"The Law of Ancient Lights and Its Reform."—30 Law Magazine and Review, 181.

"The Abolition of the Professional Criminal."—30 Law Magazine and Review, 188.

"Development of International Law."—39 American Law Review, 815.

"The Corporation Problem,"—39 American Law Review, 835.

"The Recognition of Panama."—39 American Law Review, 853.

"Reform of Our Land Laws."—39 American Law Review, 871.

"Customary Law in Modern England."—5 Columbia Law Review, 561.

"The Position of a Trustee in Bankruptcy with Reference to Invalid Transfers or Liens."—5 Columbia Law Review, 584.

"A Dangerous Position for the Railroads. (Regulation of railroad rates.)"—5 Columbia Law Review, 600.

"Can There be Disseisin without a Claim of the Freehold?"—5 Columbia Law Review, 605.

"Statutory Liability of Shareholder to Corporation Creditors."—5 Columbia Law Review, 606.

"Bills to Remove Cloud on Title."—5 Columbia Law Review, 609.

"The Statute of Uses and the Modern Deed."—4 Michigan Law Review, 109.

"The Constitutionality of the Indiana Anti-Cigarette Law."—4 Michigan Law Review, 124.

"Shipping Subsidies."—20 Political Science Quarterly, 594.

"Recent Railroad Commission Legislation."—20 Political Science Quarterly, 612.

"Berlin's Tax Problem."—20 Political Science Quarterly, 665.

"Private Property in Maritime War."—20 Political Science Quarterly, 696.

"The Obligation of Contract in its Relation to the United States Constitution."—67 Albany Law Journal, 315.

"Ancillary Receiverships in Bankruptcy."—31 National Corporation Reporter, 575, 576.

"Criminal Liability of an Inciter or Abettor of Suicide."—41 Canada Law Journal, 857.

"Photographs in Evidence."—9 Law Notes, 165.

"The Doctrines of Assumed Risk and Contributory Negligence as Defenses to Actions for Damage Resulting from a Failure to Comply with Express Statutory Provisions."—61 Central Law Journal, 446.

The Humorous Side.

TERRESTRIAL JURISDICTION.—Two young attorneys in Kentucky were recently pitted against each other in a "hoss law suit" styled Angel *v.* Angel. The defendant's attorney offered to file a special demurrer on the ground that the circuit court "did not have jurisdiction to try angelical disturbances." But the court, "being advised," overruled same. It seems that even the angels quarrel over Kentucky horse flesh.

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Wood, Fire Insurance, 2nd ed., 2 vols., 1886, good S. H	6.00
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